

Jarvis, Ronald

From: Falvey, Jim [Jim.Falvey@espire.net]
Sent: Wednesday, September 05, 2001 6:52 PM
To: 'rjarvis@kelleydrye.com'
Subject: FW: Worknet Follow-Up

Here's a good one. Note that our initial request for Missouri was May 2.

> -----Original Message-----

> From: Falvey, Jim

> Sent: Tuesday, July 17, 2001 2:32 PM

> To: 'WOLFE, SUZETTE (SWBT)'

> Subject: Worknet Follow-Up

>

> On May 2, 2001, e.spire requested to opt into the MCI agreement in

> Missouri. If that agreement were legitimately not available, e.spire

> requested the Worknet agreement as a fallback. It is my understanding
> that SWBT is taking the position that the MCI agreement is not available.

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>

> Accordingly, SWBT should have long since sent e.spire a verbatim copy of
> the Worknet agreement as of May 2, 2001 for signature and filing with the
> Missouri Commission. Instead, SWBT was completely nonresponsive to
> e.spire's request until Monday, July 16, 2001. At that time, SWBT
> proposed an amendment to e.spire relating to reciprocal compensation,
> which was not part of the Worknet agreement on May 2, 2001 when e.spire
> made its request. SWBT is in violation of Section 252(i). e.spire
> reserves its right to pursue this violation of the Act in the appropriate
> forum.

**COMMENTS OF E.SPIRE COMMUNICATIONS, INC.
APPLICATION OF SBC COMMUNICATIONS ET AL. FOR
271 AUTHORIZATION IN ARKANSAS AND MISSOURI**

EXHIBIT 5

Jarvis, Ronald

From: Falvey, Jim [Jim.Falvey@espire.net]
Sent: Friday, September 07, 2001 5:14 PM
To: 'rjarvis@kelleydrye.com'
Subject: FW: Worknet Follow-Up

I was looking for this and just found it. This is the SWBT response on the Worknet opt-in.

-----Original Message-----

From: LORD, SUSAN (Legal) [mailto:sl2192@sbc.com]
Sent: Tuesday, July 24, 2001 6:01 PM
To: Falvey, Jim
Cc: WOLFE, SUZETTE (SWBT)
Subject: Worknet Follow-Up

July 24, 2001

Mr. James C. Falvey
Senior Vice President-Regulatory Affairs
e.spire Communications, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Via E-mail and Overnight Mail

Re: Requests for Adoption of Interconnection
Agreement(s) pursuant to Section 252(i) of the Telecom Act by e.spire

Dear Mr. Falvey:

The purpose of this letter is to provide a response to your July 17, 2001 e-mail to Ms. Suzette Wolfe, lead negotiator on behalf of Southwestern Bell, relating to the May 2nd request by e.spire Communications ("e.spire") to adopt the Interconnection Agreement between Southwestern Bell and MCI Worldcom Communications, Inc. for the State of Missouri ("MCI Agreement") or, in the alternative, if the MCI Agreement is not available, e.spire's request on the same date to adopt the Interconnection Agreement between Southwestern Bell and Worknet ("Worknet Agreement") for the State of Missouri.

My clients at Southwestern Bell reviewed e.spire's request for the MCI Agreement and promptly informed e.spire that it could not adopt that Agreement. As noted by Ms. Willena Slocum of SBC in her May 4th letter to Mr. James C. Falvey of e.spire, the MCI Agreement in Missouri is not available for adoption. Southwestern Bell is required to make an agreement available for adoption for a reasonable period of time, and it is not available for adoption once it has expired or been noticed for termination. The MCI Agreement has been noticed for termination and, therefore, it is not available for adoption.

Southwestern Bell has also reviewed e.spire's alternative request to adopt the Worknet Agreement. The review process associated with e.spire's request took additional time so that Southwestern Bell could evaluate the impact of the FCC's recent order on reciprocal compensation. Southwestern Bell has concluded its review of e.spire's request and determined that the Worknet Agreement is available for sectional adoption. However, by operation of law, e.spire may not opt into the terms and provisions for ISP compensation in

the Worknet Agreement because the recent FCC order held that such ISP compensation provisions are outside the permissible scope of Section 252(i) as of April 18, 2001. See FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68 (rel. April 27, 2001, adopted April 18, 2001, published

May 15, 2001)("ISP-Remand Order"). In the Ordering Clauses of the ISP-Remand Order, the FCC specifically ordered that "the provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register."

In addition, e.spire may not opt into the terms in the Worknet Agreement relating to reciprocal compensation based upon the FCC's finding that as of the date of its adoption of such Order, April 18, 2001, such terms have already been made available for a reasonable amount of time and are no longer available for adoption. See Footnote 155 of the ISP-Remand Order. The terms relating to reciprocal compensation of the Worknet Agreement have been available for a reasonable amount of time and are no longer available.

Thus, it is Southwestern Bell's position that e.spire may sectionally adopt all rates, terms and conditions in the Worknet Agreement, with the exception of any rates, terms and conditions associated with intercarrier compensation (and any legitimately related terms) and that the parties must negotiate rates, terms and conditions for intercarrier compensation to replace that portion of the underlying Worknet Agreement. On July 16, 2001, Southwestern Bell forwarded proposed terms and conditions for intercarrier compensation to e.spire for its review and consideration.

Southwestern Bell also reserves its rights to invoke at any time in the future the intervening law or change of law provisions and to adopt on a date specified by Southwestern Bell the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Susan M. Lord
Attorney

SUSAN M. LORD
214-464-8347

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